Brief for Respondents on Reargument

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. ~~8~~ 4

SPOTTSWOOD THOMAS BOLLING, ET AL.,
Petitioners,

v.

C. MELVIN SHARPE, ET AL.,
Respondents.

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PRELIMINARY STATEMENT AND SCOPE OF BRIEF

A final judgment of the United States District Court for the District of Columbia dismissing a complaint for injunction and declaratory judgment is here for review, by writ of certiorari, before judgment by the United States Court of Appeals for the District of Columbia Circuit. The petitioners, plaintiffs in the District Court, sought admission to the Sousa Junior High School, a junior high school in Division 1 of the public school system of the District of Columbia, which division encompasses the several schools

for white pupils, contending that the separation of white and Negro children in the public schools violates Articles I, Sec. 9, Clause 3 of the Constitution of the United States, the Fifth Amendment to the Constitution of the United States, Title 8, Sections 41 and 43 of the United States Code, and Chapter I, Article 1, Section 3 and Chapter IX, Articles 55 and 56 of the Charter of the United Nations.

Oral argument was heard by this Court on December 10th and 11th, 1952.

On June 8, 1953 an order was issued restoring this and four companion cases to the docket and assigning them for rebriefing and reargument. Because certain terms of the order are believed to be specially significant in the matter of the scope of this brief, the order is set forth below with those terms emphasized.

Citation of the Opinion Below, the statements of the Grounds of Jurisdiction and Questions Presented, and the respondents' version of a proper Statement of the Case are set forth on pages 2-5 of the Brief for Respondents filed at the October Term 1952, and will not be here repeated.

The Order of June 8, 1953

(With Emphasis Supplied)

"Each of these cases is ordered restored to the docket and is assigned for reargument on Monday, October 12, next. In their briefs and on oral argument counsel are requested to discuss particularly the following questions *insofar as they are relevant to the respective cases*:

"1. What evidence is there that the Congress which submitted and *the State legislatures and conventions* which ratified the *Fourteenth Amendment* contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?

"2. If neither the Congress in submitting nor *the States* in ratifying *the Fourteenth Amendment* understood that compliance with it would require

the immediate abolition of segregation in public schools, was it nevertheless the understanding of the framers of *the Amendment*

(a) that future Congresses might, in the exercise of their power under § *5 of the Amendment*, abolish such segregation, or

(b) that it would be within the judicial power, in light of future conditions, to construe *the Amendment* as abolishing such segregation of its own force?

"3. On the assumption that the answers to questions 2(a) and (b) do not dispose of the issue, is it within the judicial power, in construing *the Amendment*, to abolish segregation in public schools?

"4. Assuming it is decided that segregation in public schools violates *the Fourteenth Amendment*,

(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),

(a) should this Court formulate detailed decrees in these cases;

(b) if so what specific issues should the decrees reach;

(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

> "The Attorney General of the United States is invited to take part in the oral argument and to file an additional brief if he so desires."

The emphasized words in the foregoing quotation of the Court's order demonstrate that all of the questions are intimately related to the 14th Amendment. Prior decisions support the view of counsel that the Court recognized that the Amendment applies only to the four State cases and anticipated that the questions would, therefore, not be relevant to the District case. In *Wight* v. *Davidson,* 181 U. S. 371, 384, the Court said:

> "* * * the 14th Amendment of the Constitution of the United States, * * *, in terms, operates only to control action of the states, and does not purport to extend to authority exercised by the government of the United States."

Indeed, it appears that not only does the 14th Amendment not apply to the Congress when legislating for the District, but this Court, on the same day that it announced the decision in *Wight* v. *Davidson,* said in *Cass Farm Co.* v. *Detroit,* 181 U. S. 395, 398, with reference to the 14th Amendment:

> "* * * that Amendment legitimately operates to extend to the citizens and residents of the states the same protection against arbitrary state legislation affecting life, liberty, and property as is afforded by the 5th Amendment against similar legislation by Congress, * * *."

In a number of places in their Brief on Reargument,[1] particularly on page 89, petitioners take the same view as do the respondents: that only the Fifth Amendment has any bearing on the constitutionality of laws providing for a

[1] Pp. 30, 32, 49, 51, 65 and 89.

dual school system in the District of Columbia. Regarding locally applicable constitutional provisions, the United States Court of Appeals for the District of Columbia Circuit held that "The equal-protection clause of the Fourteenth Amendment does not apply, that Amendment being directed to the states."[2]

This being so, counsel for respondents are of the opinion that none of the questions as propounded by the Court in its order of June 8th is relevant to this case. They nevertheless believe that they should endeavor to assist the Court by setting forth applicable principles that would come into play if the 4th and 5th questions propounded by the Court were predicated on a violation of the Fifth Amendment rather than the Fourteenth. Apparently petitioners' counsel also concluded that the first three questions propounded in the Court's order of June 8 last are inapplicable to the District for, in their Brief on Reargument, they have not undertaken to specifically answer any but the fourth and fifth questions.

While the Court's order of June 8, 1953 does not in terms preclude rebriefing and reargument of the whole question before the Court, it was, and still is, the view of counsel for respondents that the principal subject was completely and fully briefed at the October Term 1952 and that, in approximately ten hours of argument by counsel in the five pending cases involving the subject of separation of races in education, the Court had heard about all of the argument that it desired on those aspects of the subject outside the scope of the Court's questions. Petitioners, however, in addition to replying to the last two of the Court's questions, have filed a lengthy brief touching upon all of the points heretofore raised by them. A study of the brief shows that it actually contains not a single additional point beyond that which was contained in the original brief

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[2] *Hamilton National Bank* v. *District of Columbia*, 81 U. S. App. D. C. 200, 156 F. 2d 843, 846.

filed on behalf of petitioners, although it does attempt to lay special emphasis upon and to enlarge on one phase of the matter. Because counsel for respondents believe that the Brief for Respondents filed in 1952 is a complete refutation of all points raised by petitioners in both of the briefs submitted by them, this brief shall contain only answers to the Court's 4th and 5th questions and a general statement of respondents' position.

SUMMARY OF ARGUMENT

Accomplishment of integration of the two separate school systems in the District of Columbia or elsewhere requires something more than mere reshuffling of the pupils, and, therefore, immediate transition from the dual to a single school system, in the event the former is declared unconstitutional, does not necessarily follow. Proper indoctrination and instruction of teachers, and passage of necessary legislation, including appropriations for required changes, make the immediate change to a unified local system impossible.

Although no gradual adjustment appears necessary in the District of Columbia and none is recommended by respondents, the Court's equity powers are broad enough to permit such adjustment from a dual to an integrated school system, particularly in the light of the equality of facilities afforded petitioners under the prevailing system.

The magnitude of the problems encompassed in arranging for integration of schools in the several jurisdictions directly involved in the five cases before the Court is such that the framing of a detailed decree by this Court, even with the assistance of a Special Master, is not feasible. If separate schools for the races are declared unconstitutional, cognizance should be taken by this Court of the necessity for proper preparation for integration and the cases should be remanded to the respective district courts with instructions to order prompt preparation for integration and to order actual commencement and completion of integration within a reasonable period of time.

ARGUMENT

I

Question 4(a)—In the Event that Separate Schools for White and Negro Children are Declared Unconstitutional, Immediate Transition from the Dual to a Single School System Does Not Necessarily Follow

Assuming that the Court should decide that segregation of the races in public schools is violative of the Constitution, it does not necessarily follow that, within the limits set by normal geographical school districting, either Negro or white children should forthwith be admitted to schools of their choice. In making this assertion counsel for respondents do not embrace the other extreme embodied as one suggestion made in the brief filed at the October Term 1952 by the United States as *amicus curiae* that integration of pupils be commenced on a first-grade level and extended by grades annually so as to stretch out over a twelve year period. It is conceded that, if necessary, a reshuffling of white and Negro pupils in the schools of the District of Columbia could be accomplished within a comparatively short time by a simple directive. But reshuffling of pupils alone does not effect integration of two presently independent school systems. "Integrate", as defined in *Webster's New International Dictionary* (2nd Ed. Unabridged-1946), means, *inter alia*,:

> "To form into one whole, to make entire, to complete, *to round out; to perfect.*" (Emphasis supplied.)

If the elimination of the dual school system is to afford even the minimum benefits which are claimed for a unified system, the transformation must, indeed, be rounded out and perfected. Mere recitation of figures demonstrates the magnitude of the undertaking. In early November there

were approximately 104,000 children in the public schools of the District, divided about 45,000 white and about 59,000 Negro. Seventeen hundred white and eighteen hundred Negro teachers, a total of about 3,500, were provided for instruction of these pupils.[3]

Counsel for respondents make no dire predictions of widespread bloodshed among intermingled pupils of the two races, but past experience in the field of local recreation[4] leads to the conclusion that some conflict is possible if proper preparation is not made and if supervising personnel are not adequately trained to guide the children. That tension between the races has existed elsewhere for many years and that numerous serious clashes have occurred as a result thereof was recognized by this Court as recently as April 28, 1952 in *Beauharnais* v. *Illinois*, 343 U. S. 250, 258-261. In both the Court's opinion and in dissents in that case are found such expressions as: (p. 259) "From the murder of the abolitionist Lovejoy in 1837 to the Cicero riots of 1951, Illinois has been the scene of exacerbated tension between races, often flaring into violence and destruction"; (p. 261-262) "• • • tension and on occasion violence between racial and religious groups must be traced to causes more deeply embedded in our society than the rantings of modern Know-Nothings"; (p. 273) "But emotions bubble and tempers flare in racial • • • controversies • • •"; (p. 283) "Racial • • • biases and prejudices lead to charge and counter-charge, acrimony and bitterness".

In addition to the training given to the United States Park Police in 1949[5] (with refresher courses given annually thereafter), the Recreation Department of the District of

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[3] Letter from Superintendent of Schools, D. C. dated November 19, 1953—Appendix p. 1.

[4] See *Washington Post* of June 30, 1949 regarding clashes at Anacostia Swimming Pool June 19, 1949; and *Washington Evening Star*, August 6, 1949 and August 9, 1949 showing that the pool was closed July 1, 1949 and not reopened until after U. S. Park Police were trained in inter-group relations and the handling of racial tensions by Dr. Joseph Lohman, University of Chicago sociologist.

[5] See footnote 4, ante.

Columbia, to properly prepare its personnel for interracial use of playgrounds (which, as pointed out in Petitioners' Brief on Reargument, is progressing in the District), recently completed a six-weeks course in inter-group relations for 36 of its workers.[6] As in any field of education, the number of those instructed was necessarily limited by the number that could be accommodated in one class. It must be remembered in connection with these programs of instruction that participation in recreation is on a voluntary basis, whereas attendance at school is compulsory, and that, accordingly, the need for instruction in proper handling of regrouped children in schools is even greater than in the recreation field.

It would seem that in order to round out and perfect the regrouping of 104,000 children in a community as far south as Washington, proper indoctrination of the 3500 teachers in the principles of inter-group relations is a prerequisite. Not only would such an educational program amongst this number of teachers consume a substantial amount of time for the teachers themselves, but the problems of locating suitable instructors in the subject and of financing the program are important considerations. The latter item would, of course, require appropriation of funds by the Congress both for the salary of the teachers while in training and for paying their instructors. The amount of time necessary to obtain such appropriations is unpredictable.

The prior preparation of teachers and of the public for integration is a subject that has been a matter of study in the past. In a bulletin published by the United States Office of Education (now a part of the U. S. Department of Health, Education and Welfare) entitled "*Education of Teachers for Improving Majority-Minority Relationships*"[7] prepared by Dr. Ambrose Caliver, eminent Negro

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[6] Letter from Superintendent of Recreation, D. C. dated November 23, 1953. Appendix p. 2.

[7] Bulletin 1944, 2.

educator and Senior Specialist in the Education of Negroes in the United States Office of Education, the following is found:

> "Conditions which are likely to prevail at the close of the present crisis demand that we know all our neighbors better, and that we attain knowledge of them as quickly as possible. This demand suggests the need of consideration of ways and means. One important agency we have to spread such knowledge is the schools, and teachers are the chief means, *but they must first be prepared.* Their interests, information, and attitudes must be developed in such a manner as to give them an appreciation of their responsibility to understand the profound social changes that are taking place, and a determination to help their pupils make the required transition as effectively as possible."[8]
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> * * * * * * * * *
>
> "Another matter that is of extreme importance in developing better race relations through the schools is the attitude of the teacher. * * * The purpose of such courses is to influence the attitude of prospective teachers, who in turn will influence the pupils in the schools. The setting and atmosphere in which the course is conducted, which have an important effect in developing proper attitudes toward different minority groups, are largely provided by the attitude of the teacher."[9] (Emphasis supplied.)

Among other things, the publication above referred to reviews the facilities available to teachers for training in race relations and the author concludes that the facilities provided in the Nation's colleges and universities are few in number, poorly distributed and limited in scope, and that such courses as are available are not required of the student.[10] Other publications on the subject, including

[8] *Idem* p. 4-5.
[9] *Idem* p. 41.
[10] *Idem* p. 49, et seq.

some 25 books and pamphlets contained in a newly compiled *Kit on Intergroup Education* prepared jointly by the American Teachers Association and the National Education Association, in cooperation with the United States Office of Education, support the strong conviction of educators that prior preparation of teachers and prior indoctrination of the public are essential prerequisites to effective integration of different racial groups.[11]

A second major consideration in effecting integration of the dual school system in the District of Columbia is the matter of teacher replacements and promotions. In the District of Columbia Teachers Salary Act of 1945 (59 Stat. 488, approved July 21, 1945) separate boards of examiners and separate chief examiners for the white and colored schools were provided for, and subsequent enactments (District of Columbia Teachers Salary Act of 1947 [12] and an amendment thereto in 1951 [13]) repeated and extended such provision. Pursuant to these Acts of Congress, rules were promulgated by the Board of Education of the District of Columbia under which separate examinations for teachers have been conducted and separate eligible lists compiled. There is no feasible way to combine the two lists, eligibles on which have, in some instances, preferential employment rights under the rules for as long as three years.[14] Such rules have the force and effect of law. *U. S. ex rel. Denny* v. *Callahan*, 54 App. D. C. 61, 294 Fed. 992. Without corrective legislation, the conflict of rights of the eligibles on the two lists would probably lead to extended litigation and, indeed, necessary appointments of teachers could not be

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[11] *Minority Problems in the Public Schools*, by Theodore Brameld, Professor of Educational Philosophy, University of Minnesota, and Special Consultant for Bureau for Intercultural Education (Harper Brothers 1946); *More-than Tolerance*, National Education Association of the United States, May 1946, p. 8-10; *From Sea to Shining Sea*, American Association of School Administrators, 1947 p. 46, et seq.

[12] 61 Stat. 258, approved July 7, 1947.

[13] 65 Stat. 605, approved October 24, 1951.

[14] Rules of Board of Education, D. C., App. p. 4 (see also letter from Superintendent of Schools, App. p. 1).

accomplished. Time within which such legislation can be obtained is not readily predictable.

From the foregoing it is clear that question 4(a) propounded by the Court must be answered in the negative.

II

Question 4(b)—In the Event That Separate Schools for White and Negro Children are Declared Unconstitutional, the Breadth of the Court's Equity Powers and the Factual Situation in the District Permits, But Does Not Necessarily Require, An Effective Gradual Adjustment to be Brought About

Since there is no allegation of inequality of facilities in the case involving public schools in the District of Columbia, there can be no doubt, with reference to the second part of question number four propounded by the Court, that the Court, if it finds the dual school system to be unconstitutional, may, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from the existing segregated to an integrated system. The attention of the Court is directed to the statement made on page 48 of the Brief for Petitioners on Reargument that:

> "Here there is no question of equality of facilities."

This fact is repeated in the "Conclusion" on page 96 of petitioners' latest brief:

> "Here no question of equality of facilities is in issue."

From *Sweatt* v. *Painter,* 339 U. S. 629, 635, counsel for petitioners quote the statement, "It is fundamental that these cases concern rights which are personal and present." They also cite *Sipuel* v. *Board of Regents,* 332 U. S. 631, 633; *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337, 352;

Farrington v. *Tokushige*, 273 U. S. 284; *Pierce* v. *Society of Sisters*, 268 U. S. 510 and *Meyer* v. *Nebraska*, 262 U. S. 390, to support the proposition that, if the dual school system in the District of Columbia is struck down as unconstitutional, the resulting change to a single system must be immediate. The *Sweatt* case, however, and all of the other cases that they cite were written against a background of either complete denial of educational opportunity or of such inferior facilities therefor as to amount to complete denial. Such is not the case in the District of Columbia. Indeed, on pages 93 and 95 of their Brief on Reargument counsel for petitioners "concede that there may well be difficulties and delays of a purely administrative nature involved in bringing about desegregation", and "concede the possibility of delay until the next school year by reason of administrative requirements." These concessions refute the theory of petitioners that a declaration of unconstitutionality requires *immediate* transition from the dual to a single school system. In effect they are saying, "We are being educated in separate schools, as to which we make no contention that there is not equality of facilities, but mere separation from our white brethren is unconstitutional and, although you may deny us those constitutional rights for a short time (which we think is only until the next school term) you may not deny them for a period beyond that which we think is a proper one."

In concluding that the Court *may* permit an effective gradual adjustment to be brought about, counsel for respondents do not suggest that a gradual adjustment would be desirable or, indeed, necessary. In the judgment of experts, integration might be accomplished in certain areas of the District before it is ordered in others if, as may possibly be the case, some teachers have been properly prepared to handle integration and others have not been properly instructed. In such a case, the integration of children in some schools may afford what may be termed "work-

shops" for the even better indoctrination of teachers yet to be instructed on the subject. Unless, however, competent authority should reach such a conclusion, respondents counsel conceive of no reason for "gradual adjustment" from a dual to a single unsegregated system if the former is unconstitutional.

The right of the Court, in exercising its equity power, to formulate decrees which take "into mind the complexity of the situation in all of its aspects and [give] weight to the many-sided considerations which must control * * *"[15] is well established. As was said in *United States* v. *Morgan*, 307 U. S. 183, 194, "It is familiar doctrine that the extent to which a court of equity may grant or withhold its aid and the manner of moulding its remedies may be affected by the public interest involved."

Again in *Virginian Railway Co.* v. *System Federation, Etc.*, 300 U. S. 515, 552, Mr. Justice Stone, speaking for the Court, said:

> "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved."

The same Justice, in a later case (*Securities & Exchange Commission* v. *United States Realty Company*, 310 U. S. 434, 455) expressed an even more far-reaching doctrine, as follows:

> "A court of equity may in its descretion in the exercise of the jurisdiction committed to it grant or deny relief upon performance of a condition which will safeguard the public interest. *It may in the public interest, even withhold relief altogether, and it would seem that it is bound to stay*

[15] *U. S.* v. *American Tobacco Co.*, 221 U. S. 106, 187.

its hand in the public interest when it reasonably appears that private right will not suffer.'' (Emphasis supplied.)

No one will gainsay that, if integration is ordered, its perfection without conflict or difficulty and with an attitude of acceptance by all concerned is in the public interest. Where, as in the District of Columbia, there is a complete system of public schools for Negroes and where "there is no question of equality of facilities", "it would seem that (the Court) is bound to stay its hand in the public interest (for) it reasonably appears that private right will not suffer." Certainly private right will not suffer for the reasonable length of time that may be required to obtain from Congress necessary legislation and appropriations, to make necessary administrative arrangements and to properly indoctrinate teachers and the public to a radical change in the local educational system.

Again counsel for respondents make the point that they do not advocate and see no need for a protracted extension of the time for integration of the schools of the District if the same should be ordered. They do, however, firmly believe that an adequate time is necessary and advisable to accomplish the change in the manner in which acknowledged leaders in education believe that such a change should properly be accomplished.

III

Question 5—In The Event That Separate Schools for White and Negro Children Are Declared Unconstitutional, Without the Formulation of a Detailed Decree, and Without the Appointment of a Special Master, the Court Should Remand the Cases to the District Courts With Directions to Integrate Schools as Expeditiously as Conditions Warrant

For convenience, question number five propounded by the Court, although divided into four parts, will be answered as one.

Counsel for respondents are not in disagreement with the basic position taken by petitioners on pages 94-96 of their Brief on Reargument in answer to the several parts of the fifth question from the Court. It is not believed that, in the event the dual school system in the District of Columbia should be declared unconstitutional, this Court should formulate a detailed decree, and, accordingly, it follows that there is no necessity for the Court to appoint a special master to hear evidence with a view to recommending the terms for a detailed decree. It, of course, is not known to counsel for respondents whether the Court will hold unconstitutional the dual school systems involved in all of the cases now before it. It is assumed, on the basis of authorities and arguments set forth in Section III of the Brief For Respondents filed herein in 1952 (pp. 16-31, and particularly p. 30), that, since the Fifth Amendment, which applies to the District of Columbia, contains no "equal protection" clause as does the 14th Amendment, which applies to the States, unconstitutionality cannot be found here unless it is also decreed in the State cases. A holding by the Court of unconstitutionality of separate systems of schools for white and Negro children would present vast and varying problems in the five jurisdictions involved. Accordingly, the framing of detailed decrees would be a task which, frankly, it is not believed the Supreme Court is equipped to work out unless it should have testimony on the needs in each of the five jurisdictions through the medium of a Court appointed special master.

But if the Court should decree the separate school systems in the five jurisdictions before it to be unconstitutional, it is obvious that the whole question of the separation of the races in public school education would be settled throughout the United States—indeed, such a ruling might well affect the validity of all laws providing for separate but equal treatment of different races in areas other than that of public education. There is, therefore, every reason

to believe that the problem of adjustment, in the event of such a ruling, would be of no less magnitude in the thirteen remaining jurisdictions in which there is separation in the schools by races than in the five which are now before the Court. Each such jurisdiction would be obliged to work out the details of adjustment through legislation, administrative changes, education of teachers, education of the public, etc.

In other words, eighteen separate political subdivisions of the United States would be obliged to make revolutionary changes in what has been described as "a way of life". The practical impossibility of framing detailed decrees to effect such vast changes in so many places is at once apparent.

Obviously, the forum for the preparation and direction of the transformation, if such a change is to be made, is the district court in each jurisdiction. Here there are readily available facilities and rules for the taking of testimony, for informal conferences for the working out of intimate details that may be necessary—indeed, for the judicial knowledge of local conditions so essential to effect adjustments in such a major and, at the same time, sensitive area.

The time that may be necessary to accomplish complete integration of the school system in the District of Columbia cannot here be foretold. Perhaps by cooperation between the leaders of Congress and local authorities, both administrative and judicial, the changeover could be effected in a short time. The soundest suggestion that counsel for respondents can make to the Court concerning the nature of the order, if unconstutionality is to be decreed, is that the Court make recognition of the necessity for proper preparation and changes which appear essential to perfect integration in all jurisdictions and remand the cases to the respective district courts with instructions for such courts to prepare decrees directing the immediate commencement of such preperation, with periodic

investigation by the district courts of the progress thereof, with direction that, in accordance with the principle of unconstitutionality of separation of races in schools, integration be commenced at the earliest possible date, and that complete integration be accomplished by a definite future date, not to exceed in any jurisdiction more than a maximum period of time.

IV

Summary of Position of Respondents

Counsel are aware of the expressed policy of the President of the United States to use the power of his office to terminate all forms of segregation in the Nation's Capital and are cognizant of steps taken by the Government of the District of Columbia in furtherance of that declared purpose of the President.

Because the subject of segregation has many facets, particularly in the light of governmental pronouncements and actions in the realm of improvement of race relations generally and in order to avoid any misconception concerning the basis of the arguments which have been advanced on behalf of respondents, it is deemed advisable to set forth below a clear and concise statement with reference thereto.

No attempt is made to debate the rightness or wrongness of the separation of children by races in the schools of the District of Columbia. For the reason that it is not believed that the sociological issue is involved, no poll has been taken of the individual respondents as to their views on that issue. From public utterances, counsel for respondents believe that, while some may favor a continuance of the dual school system in the District of Columbia, others of the respondents are strongly of the view that the time for integration has arrived.

As forcefully as the plain statement thereof can make it, counsel for respondents state to the Court that the position

they take and have taken in argument and in the Brief for Respondents filed at the October Term 1952, is a strictly legal position which they, as officers of the Court, feel duty-bound to present because of their belief in its soundness.

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